

# Reporting of the Record Task Force

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DRAFT REPORT

SEPTEMBER 27, 2004



JUDICIAL COUNCIL  
OF CALIFORNIA

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ADMINISTRATIVE OFFICE  
OF THE COURTS

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This document is circulating for public comment from September 27, 2004, to November 5, 2004.

# Draft Report

## Reporting of the Record Task Force

Judicial Council of California  
Administrative Office of the Courts  
September 27, 2004

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Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

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This report is also available on the California Courts Web site:  
<http://www.courtinfo.ca.gov/courtadmin/jc/tflists/reprecored.htm>  
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### **Acknowledgments**

The Reporting of the Record Task Force would like to acknowledge the following for their support of the task force and dedication to the improvement of court reporting services in California:

- Hon. Ronald M. George, Chief Justice of California, and members of the Judicial Council
- Mr. William C. Vickrey, Administrative Director of the Courts, Administrative Office of the Courts
- Mr. Ronald G. Overholt, Chief Deputy Director, Administrative Office of the Courts
- Ms. Karen M. Thorson, Director, Education Division, Administrative Office of the Courts
- Ms. Maggie Cimino, Supervising Education Specialist, Education Division, Administrative Office of the Courts
- The leaders and members of the California Court Reporters Association
- The leaders and members of the California Official Court Reporters Association
- The leaders and members of the Los Angeles County Court Reporters Association
- The Court Reporters Board of California
- Court reporters of the state of California
- The many court executive officers who facilitated the participation of their reporter employees in meetings between the Administrative Office of the Courts and court reporter leadership

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### EXECUTIVE SUMMARY

This report contains the findings and recommendations of the Reporting of the Record Task Force, a 17-member body formed in April 2002. The Judicial Council charged the task force with evaluating the provision of court reporting services. The task force proposes extensive reform to the transcript format, the current manner of delivering and storing the transcript, training for court reporters, and transcript fees. This report provides a concise synopsis of the issues, evaluations, and recommendations.

#### Charge

The official charge of the Reporting of the Record Task Force was to evaluate and make recommendations to the Judicial Council regarding, but not limited to, the following issues relating to reporting of the record within California:

1. Standardization of stenographic court reporting systems;
2. Uniformity of transcript formats;
3. Expanded use of court reporters' evidence and presentation technology;
4. Ownership of transcripts and related products;
5. Uniformity of transcription and other court reporting service fees;
6. Delivery, maintenance, and storage of transcripts via electronic and paper media, including access to reporters' notes;
7. Training of court reporters;
8. Review of provisions relating to court reporting of the Appellate Rules of the California Rules of Court and related statutes; and
9. Shortage of qualified court reporters, including such issues as recruitment, retention, and the consequent need to develop criteria for the use of alternative methods of reporting and maintaining the record.

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### Recommendations

Over its two-year term, the task force developed recommendations for the future of court reporting in our state. This report offers the following recommendations:

1. Adopt the following overarching standards for the delivery, maintenance, and storage of the electronic transcript, master index, and reporter's notes:
  - A. Delivery  
The transcript, master index, and reporter's notes must be in a form that can be transmitted electronically. The electronic transmission must be secure, timely, and cost-effective.
  - B. Maintenance and Storage  
The electronic transcript, master index, and reporter's notes must be maintained and stored in a manner that is secure, accessible to authorized persons, and cost-effective.
2. Establish a secure Web-based system to receive, maintain, and store the electronic transcript, master index, and reporter's notes.
3. Conduct a pilot project for the delivery, maintenance, and storage of the electronic transcript, master index, and reporter's notes.
4. Require the use of court reporting equipment and software able to comply with the following:
  - A. Any interim transcript format recommendations for the implementation of the online registration and certification pilot project; and
  - B. The final transcript format recommendations arrived at upon the completion of the above pilot project for the statewide transition to online registration and certification.
5. Require the use of court reporting equipment and software capable of producing electronic transcripts and notes. Reporters may continue to use the equipment and software of their choice, as long as these are able to comply with the task force's recommendations and meet the needs of the courts.
6. Establish a uniform format for transcripts of court proceedings per the specifications contained in this report.

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7. Take the following actions concerning word rates:
  - A. For payment purposes, establish a single standard word rate for all court-paid transcripts;
  - B. Require the use of the same word rate for all transcripts of criminal and juvenile proceedings, irrespective of purchaser;
  - C. Ensure that a single standard word rate results in overall net revenue neutrality for reporters and overall net expenditure neutrality for the courts; and
  - D. For all other transcripts, establish a word rate that is 18 percent over the single standard word rate established in 7A above.
8. Require the use of one statewide software program to count the number of words in all electronic transcripts of court proceedings.
9. Adopt procedures through which the court assumes control of and responsibility for providing access to the transcript without further payment to the reporter beyond the initial payment.
10. Favorably act upon the recommendations that proceed from the agreement titled “Agreement – Use of Nonstenographic Methods for Reporting of the Record, February 6, 2004.”
11. If the recommendations of the above-mentioned agreement are enacted, create a rule of court to provide guidelines for the identification of inaudible and unintelligible speech in transcripts produced by nonstenographic reporting methods.
12. Create rules of court to require that all transcripts produced from nonstenographic reporting methods and transmitted to the courts comply with all recommendations contained in this report.
13. Design and implement a comprehensive curriculum for the training of court reporters through the assistance of the Administrative Office of the Courts’ Education Division.

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14. Implement the following changes concerning appellate transcripts:
  - A. Amend the California Rules of Court so that the term “certified transcript” shall include either a certified original or a copy that has been certified as an accurate duplicate of the original.
  - B. Amend the California Rules of Court to require the reporter to certify each copy of the transcript as an accurate duplicate of the original.
  - C. Amend rules 4 and 9 of the Appellate Rules of the California Rules of Court to clarify and simplify the process in which a designated transcript is prepared for filing to the appellate court.

This report is available on the California Courts Web site:

<http://www.courtinfo.ca.gov/courtadmin/jc/tflists/reprecord.htm>

and

<http://www.courtinfo.ca.gov/invitationstocomment/dproposals.htm>

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### **I. THE TASK FORCE: BACKGROUND, CHARGE, COMPOSITION, AND PROCESS**

This report contains the findings and recommendations of the Judicial Council's Reporting of the Record Task Force. This report is available to the public for comment.

#### **Background**

Beginning in 1994, the Court Reporting Subcommittee of the Judicial Council's Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) reviewed matters regarding court reporting services with court reporter leadership. As the number and complexity of the issues became increasingly apparent, the subcommittee proposed to Chief Justice Ronald M. George, Chair of the Judicial Council, that a task force be created to address those issues comprehensively. Specifically, the subcommittee proposed that a task force composed of key stakeholders be convened to address such issues as transcript uniformity; fee structures; transcript ownership, delivery, and storage; training; the court reporter shortage; and alternative methods of producing the record.

The Judicial Council of California is the policymaking body for the state's judicial system, as provided in article VI, section 6 of the California Constitution. In fulfilling its responsibilities to the people of California, the Judicial Council sets the direction and provides leadership for improving the quality of justice and for advancing its consistent, independent, impartial, and accessible administration. The Chief Justice of California chairs the Judicial Council. The Administrative Office of the Courts (AOC), the staff agency of the Judicial Council, provides staff support to the council's advisory bodies, including this task force.

In the winter of 2002, Chief Justice George approved the creation of the Reporting of the Record Task Force and its charge. Accordingly, AOC staff contacted various professional groups to encourage broad participation in the task force's nomination process. In April 2002, Chief Justice George appointed the task force members. The task force reports directly to the Judicial Council.

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### Charge

The Judicial Council charged the task force with assessing the process of producing the certified verbatim record. The issues within the task force's charge directly relate to the council's strategic plan, *Leading Justice Into the Future*. Specifically, the task force's work is expected to promote the council's goals of broadening access to the courts; ensuring that justice is administered in a timely and an efficient manner; reducing the expense of litigation through simplification and standardization of court practices; and utilizing technology to enable the courts to collect, process, analyze, and share information.

The official charge of the Reporting of the Record Task Force was to evaluate and make recommendations to the Judicial Council regarding, but not limited to, the following issues relating to reporting of the record within California:

1. Standardization of stenographic court reporting systems;
2. Uniformity of transcript formats;
3. Expanded use of court reporters' evidence and presentation technology;
4. Ownership of transcripts and related products;
5. Uniformity of transcription and other court reporting service fees;
6. Delivery, maintenance, and storage of transcripts via electronic and paper media, including access to reporters' notes;
7. Training of court reporters;
8. Review of provisions relating to court reporting of the Appellate Rules of the California Rules of Court and related statutes; and
9. Shortage of qualified court reporters, including such issues as recruitment, retention, and the consequent need to develop criteria for the use of alternative methods of reporting and maintaining the record.

Owing to time constraints, the task force was not able to address item three of the charge.

Interested persons may visit the California Courts Web site to download a copy of this report and obtain other general information concerning the task force:

<http://www.courtinfo.ca.gov/courtadmin/jc/tflists/reprecord.htm>

and

<http://www.courtinfo.ca.gov/invitationstocomment/dproposals.htm>

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### Membership and Staffing

In proposing the composition of the task force, the Court Reporting Subcommittee was guided by the determination that a diverse task force—one reflecting various stakeholders' views—would develop comprehensive recommendations grounded in first-hand experience. Consequently, membership positions were created for an appellate court justice, superior court judges, appellate and trial court administrators, official court reporters, and attorneys. After appointment of the task force's members, the Court Reporters Board of California was granted a nonvoting liaison position.

Specifically, the task force consisted of 17 voting members and 1 nonvoting liaison from the following sectors of the judicial and legal communities:

- Appellate court justice as voting chair (1 position);
- Superior court judges (2 positions);
- Appellate court clerk/administrator (1 position);
- Superior court executive officers or their management designees (5 positions);
- Appellate lawyer of the Office of the Attorney General (1 position);
- Appellate lawyer experienced in criminal litigation (1 position);
- Appellate lawyer experienced in civil litigation (1 position);
- At-large court reporters (2 positions);
- California Court Reporters Association representatives (2 positions)<sup>1</sup>;
- California Official Court Reporters Association representative (1 position);
- and
- Nonvoting liaison with the Court Reporters Board of California (1 position).

The Executive Office Programs Division of the AOC provided primary staff support to the task force. Other AOC divisions provided expertise and support, including the AOC's Bay Area/Northern Coastal Regional Office, Office of Governmental Affairs, and Office of the General Counsel.

### Timeline and Schedule

Task force members were appointed to an approximate two-year term, from April 2002 to August 2004. The task force first met in June 2002 and met approximately

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<sup>1</sup> Two persons were appointed as California Court Reporters Association representatives. At a later date, one of these positions was converted to an at-large position.

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every six weeks thereafter. This draft report reflects the work of the task force to date. Upon compiling and reviewing comments from the public, the task force plans to issue its final report to the Judicial Council in December 2004. This final report will also be available on the California Courts Web site at <http://www.courtinfo.ca.gov/courtadmin/jc/tflists/reprecord.htm>.

### **Process for Development of Recommendations**

The objective underlying the creation of a diverse task force was that such a body could explore a range of varying viewpoints as it developed its recommendations concerning statewide inconsistencies in court reporting practices. It was essential that the viewpoints of all stakeholders represented by task force members be expressed and heard.

To assist the task force, the AOC contracted with a professional consultant skilled in meeting facilitation. The consultant's primary responsibilities were to facilitate meeting discussions and assist in the development of meeting materials.

After interpreting the facts, the task force explored solutions to the issues raised and attempted to arrive at its recommendations by consensus. As the task force addressed more issues, it found that full consensus could not always be achieved. In such instances, a vote was taken, and if a recommendation was approved by the majority, it was deemed to have passed. This report notes the instances in which votes were taken and gives the results of those votes.

### **Informational Resources Available to the Task Force**

#### *Guests, Presenters, and Speakers*

Various professionals were invited to speak to the task force to share their expertise. Such presentations established a common knowledge base for the task force.

#### *Public Comment*

Each task force meeting was open to the public. Any interested person could attend the meetings and observe the discussions taking place. The agenda for each meeting day allotted time for public comment, so that individuals would have an opportunity to share information directly with the task force.

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### II. PRIMARY FOCUS OF THE TASK FORCE AND DEFINITION OF “THE RECORD”

#### Primary Focus

The task force’s primary focus was the in-depth examination of the memorialization of the oral proceedings and its integration with other elements of the official court record.

The primary focus of the task force was the in-depth examination of the memorialization of the oral proceedings and its integration with other elements of the official court record. Specifically, the task force decided to focus on the following:

- How oral proceedings are memorialized now and how they could be memorialized in the future; and
- How the memorializations could be integrated and delivered with other portions of the official court record.

#### Definition of “the Record”

For the purposes of addressing the primary focus of the task force, the record is defined as the complete, accurate, certified verbatim memorialization of oral proceedings before the court.

After determining its primary focus, the task force developed a working definition of the word “record” to ensure that all members were using the term in common and with the same meaning. By this definition the word “record” encompasses only those memorializations that are *certified by a reporter as accurate* (e.g., the reporter’s transcript). Therefore, this definition does not include documents or items that are commonly considered part of

the official court record but are not certified by a reporter (e.g., exhibits and reporter’s notes).

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### III. DELIVERY, MAINTENANCE, AND STORAGE

#### Charge

Evaluate and make recommendations regarding the delivery, maintenance, and storage of transcripts via electronic and paper media, including access to reporters' notes.

#### Recommendations

1. Adopt the following overarching standards for the delivery, maintenance, and storage of the electronic transcript, master index, and reporter's notes:
  - A. Delivery  
The transcript, master index, and reporter's notes must be in a form that can be transmitted electronically. The electronic transmission must be secure, timely, and cost-effective.
  - B. Maintenance and Storage  
The electronic transcript, master index, and reporter's notes must be maintained and stored in a manner that is secure, accessible to authorized persons, and cost-effective.
2. Establish a secure Web-based system to receive, maintain, and store the electronic transcript, master index, and reporter's notes.
3. Conduct a pilot project for the delivery, maintenance, and storage of the electronic transcript, master index, and reporter's notes.

#### Background

This section of the charge required the task force to evaluate the process by which the certified verbatim transcript (hereafter "transcript") and reporter's notes are delivered, maintained, and stored. The task force began its review with a focus on the current paper process and then examined how an electronic process could meet the need for increased effectiveness and efficiency, and improved public access. The

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current process is cumbersome because of the courts' reliance on paper transcripts and delivery by traditional mail carriers.

To better understand the existing process for the delivery of transcripts, the task force invited a panel of superior and appellate court staff to share their experiences, concerns, and perspectives. Staff from the Court of Appeal, First Appellate District, also shared information concerning a past pilot project in which reporters submitted their transcripts on ASCII disks and the court attempted to convert and store the documents. The panelists brought forward many issues for consideration. First, the presenters generally shared the view that transcripts should be delivered electronically in the future. Second, they emphasized that a uniform format was essential to the smooth and accurate delivery of electronic transcripts. The First Appellate District staff related that inconsistent transcript formats often led to an inability to open files; difficulty in converting files for storage; and extensive demands on staff time to respond to these challenges. Even more important was the fact that the printed version of the transcript was not always identical to the version appearing on the disk. Also, the use of disks often resulted in corrupted or infected files.

As the task force began its evaluation, it looked at the current paper process with the objective of building an entirely new system. The task force recognized that the general trend in business is to move toward paperless operations. It also understood the courts' need to reduce storage space, labor costs, and the amount of staff time needed to locate documents. In developing its policy recommendations, the task force chose to focus on what would be ideal for future court operations. The task force's overall objectives were to provide recommendations that, if approved, would result in the more efficient transmitting and archiving of both the transcript and the reporter's notes.

After extensive consideration and discussion, the task force developed the following policy recommendations, shaped by the clearly perceived need to modernize the delivery and storage processes. The following recommendations would allow the courts to use emerging technologies and achieve greater efficiency.

### **Overarching Standards**

The electronic transcript must continue to serve the same critical function as the paper transcript—the provision of an accurate, verbatim memorialization of judicial proceedings. An accurate record of judicial proceedings is and will continue to be essential to the judicial process. Accordingly, the electronic transcript, master index,

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and reporter's notes (hereafter "documents") must be transmitted and maintained securely.

### ***Security***

The electronic system for delivery, maintenance, and storage must protect against unauthorized changes to the documents so that they remain identical to the certified versions. The electronic system must comply with existing rules of court and laws regarding privacy and access. It must also prevent alterations to the transcript format.

The electronic system must protect against unauthorized access while also providing for immediate access. Security must be structured to include 1) control over all access types (e.g., access to read only, read and modify, search only, and track only); 2) safeguards against unauthorized alterations; 3) tracking capabilities; and 4) comprehensive and routine backup. The access system should include a cataloguing system that is consistent throughout the state and offers extensive search capabilities.

### ***Timeliness***

The electronic documents must be provided in a timely manner to the courts and other users. A key element of timeliness is online posting with instantaneous transmission and immediate access to the documents.

### ***Transcript Management***

Electronic storage must provide for permanent archival of the documents. The storage system should include effective and efficient management procedures; use of a secure Web-based system; protocols for retrieval and access; protocols for destruction; adaptability for system upgrades; and comprehensive backup capabilities. For long-term accessibility, the electronic storage system should have clear access protocols, efficient retrieval capabilities, and off-site backup.

Overall, the system that is developed and operated for delivery, maintenance, and storage of the electronic documents must be cost-effective.

## **Online Services**

To be most effective, the delivery, maintenance, and storage system developed and operated should be Web-based and provide for online registration, certification, and confirmation. For the purposes of this report, "certification" is defined as a reporter or transcriptionist's attestation that the transcript is a verbatim, accurate, and

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complete memorialization of the oral proceedings. The task force recommends the use of a Web-based system because the Internet offers the qualities encompassed by the overarching standards discussed above: access, speed, accuracy, security, and cost-effectiveness. Appendix 1 is provided to illustrate the elements and steps that should be included in an online registration, certification, and confirmation process.

### *Pilot Project*

A pilot project should be conducted to facilitate the transition from a paper-based process to a Web-based system. The pilot project will need to take into account the technology available at the time and the ability of reporters, transcribers, and the courts to make the transition. It is acknowledged that with the transition to a Web-based system, courts will assume greater responsibility for the electronic documents. Advances in technology should aid the courts in taking on this added responsibility.

### **Existing Statutory and Regulatory Provisions Affected by These Recommendations**

Pursuant to AOC policies, this section lists relevant statutes, rules, and regulations, which should be reviewed for possible changes if this section's recommendations are implemented. These citations generally refer to the duties of court reporters, the number of copies to be delivered, costs for the transcript and copies, references to transcript media (such as paper transcripts), and definitions of "serve and file."

Code Civ. Proc., §§ 269, 271, 274a; Gov. Code, §§ 69950, 69954, 69955; Pen. Code, §§ 190.8, 190.9, 869, 870, 871.5, 938.1, 938.3, 1539; Welf. & Inst. Code, §§ 347, 677.

Cal. Rules of Court, rules 4, 4.162, 9, 12.5, 31.2, 32; 32.1, 34.1, 34.2, 35, 35.1, 35.2, 39.1A, 39.1B, 39.4, 39.5, 40, 44, 59, 69, 124, 125, 129, 136, 184, 200.1, 243.2, 4.162 (Criminal), 2073, 2073.5.

Cal. Code of Regs., tit. 16, § 2473.

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### IV. STENOGRAPHIC COURT REPORTING SYSTEMS

#### Charge

Evaluate and make recommendations regarding standardization of stenographic court reporting systems.

#### Recommendations

4. Require the use of court reporting equipment and software able to comply with the following:
  - A. Any interim transcript format recommendations for the implementation of the online registration and certification pilot project; and
  - B. The final transcript format recommendations arrived at upon the completion of the above pilot project for the statewide transition to online registration and certification.
5. Require the use of court reporting equipment and software capable of producing electronic transcripts and notes. Reporters may continue to use the equipment and software of their choice, as long as these are able to comply with the task force's recommendations and meet the needs of the courts.

#### Background

Reporters employed by the courts occupy a unique dual status. These reporters are considered court employees when they are reporting a proceeding. However, they are also independent contractors when they are producing and selling the certified verbatim transcript (hereafter "transcript"). Hence, reporters receive a salary from the courts for their performance as employees and they earn separate income from their sale of the transcript. This description is provided as background information.

Pursuant to statute, reporters purchase and maintain their own court reporting systems. For the purposes of this report, the phrase "court reporting systems" encompasses software, stenographic machines, portable computers, and any other hardware or software (available now or in the future) used to create electronic transcripts and notes. While various versions of court reporting software exist on

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the market, the primary function of each is to translate stenographic keystrokes into English text using the individual reporter's dictionary.

The task force first approached this portion of the charge by identifying all of the materials and tools that certified shorthand reporters currently use to create transcripts and notes. The task force also discussed the evolution of court reporting techniques and the forces that lead to change.

### **Compliance With Transcript Format Recommendations**

After extensive discussion, the task force concluded that it will be necessary for reporters to use software and hardware that are compatible with the statewide Web-based system. The courts must be able to receive, transmit, store, and use transcripts and notes without having to reformat or otherwise modify them. Court reporters would still have the flexibility to choose their court reporting systems, as long as their systems produce transcripts and notes that conform to the recommendations in this report.

### **Existing Statutory and Regulatory Provisions Affected by These Recommendations**

Pursuant to AOC policies, this section lists the relevant rule, which should be reviewed for possible changes if this section's recommendations are implemented. This rule deals with the specifications for electronic recording equipment.

Cal. Rules of Court, rule 980.6.

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### V. UNIFORMITY OF THE TRANSCRIPT

#### Charge

Evaluate and make recommendations regarding uniformity of transcript formats.

#### Recommendation

6. Establish a uniform format for transcripts of court proceedings per the specifications contained in this report.

The format, or physical appearance, of the certified verbatim transcript (hereafter “transcript”) varies significantly by court and even among official reporters in the same court. The lack of uniformity in the transcript’s format poses numerous difficulties in reading, transmitting, converting, and storing the record, and maintaining consistency of transcript fees. The task force began its analysis by identifying the major concerns of those who use and produce the transcript. The task force also discussed the evolution of transcript production and its relation to changing technologies. It became increasingly apparent that a standardized transcript would result in increased readability, efficiencies, and integration with the courts’ electronic systems.

Accordingly, it is recommended that a uniform format for transcripts of court proceedings be established per the following specifications. A sample transcript that illustrates the following recommended specifications appears in Appendix 2.

#### Recommended Format Specifications

TRANSCRIPT ELEMENT	SPECIFICATION
Binding	<ul style="list-style-type: none"><li>• All transcripts must be securely bound down the left margin in volumes consisting of not more than one date. Transcripts must be bound front and back with materials and hardware that withstand normal handling without coming apart.</li><li>• Acceptable binding hardware includes staples, brads, or other metal or plastic fasteners down the left margin. Any exposed binding hardware must be covered with tape to avoid injury or damage.</li></ul>

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TRANSCRIPT ELEMENT	SPECIFICATION
Binding ( <i>continued</i> )	<ul style="list-style-type: none"> <li>• Acceptable binding materials include               <ul style="list-style-type: none"> <li>▪ Card stock backs and white card stock fronts with the cover page printed on the front card stock;</li> <li>▪ Card stock backs with clear acetate fronts to protect the cover page printed on regular bond paper; and</li> <li>▪ Folder-style coverings with clear acetate fronts to protect the cover page printed on regular bond paper.</li> </ul> </li> <li>• When using card stock for the cover page, no other protective sheet is necessary. When using bond paper for the cover page, the page must be covered with a protective material such as clear acetate.</li> </ul> <p>(The task force voted in favor of this last specification regarding the use of an acetate cover when using bond paper. One task force member, Ms. Maura Baldocchi, voted against this specification.)</p>
Box/Border	The transcript format will not include a box or border around text.
Capitalization	It is <i>preferred</i> that the transcript text be in upper and lower case once a uniform transcript format is established. Beginning five years after the establishment of a uniform transcript format, the text of all new transcripts <i>must</i> be in upper and lower case.
Characters per Line	The transcript text must contain up to 62 characters per line, with each line containing as many words as will fit within 62 characters. Characters include blank spaces.
Cover Page	<p>(See Appendix 2 for a sample cover page.)</p> <p>The cover page and title page must be combined. This merged document would be referred to as the “cover page.” A standardized template for the cover page must be used. Information contained in the</p>

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TRANSCRIPT ELEMENT	SPECIFICATION
Cover Page (continued)	cover page must include the following: <ul style="list-style-type: none"> <li>• Appellate court and superior court captions;</li> <li>• Appellate court and superior court case numbers;</li> <li>• Two filing blocks: appellate and superior;</li> <li>• Formal title of “Reporter’s Transcript of [date]”; and</li> <li>• Indication of whether the transcript is an augmented or supplemental record.</li> </ul>
Death Penalty Transcripts	Death penalty transcripts shall be subject to all format recommendations.
Font Style and Size	The font for the transcript text must be Arial, 14-point.
Headers and Footers	The transcript must not include headers and footers, except for page numbering.
Identification of Common Events	<p>Definition of the term “Identification of Common Events”: An explanation to the reader of events that are not reflected by the verbatim text, also referred to as blurbs or parentheticals.</p> <p>Location: The identification of common events must be located in the verbatim text where the event occurs.</p> <p>Format: The identification of common events should be</p> <ul style="list-style-type: none"> <li>• As short as possible, preferably one line;</li> <li>• Centered;</li> <li>• Written in plain English;</li> <li>• In parentheses; and</li> <li>• Separated by a blank line above and below its text.</li> </ul> <p>Format samples:</p> <ul style="list-style-type: none"> <li>• Incorrect: (Whereupon the proceedings were adjourned at 3:30 p.m. and continued to November 3, 2003)</li> <li>• Correct: (Adjournment)</li> </ul>

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TRANSCRIPT ELEMENT	SPECIFICATION
<p>Identification of Common Events (<i>continued</i>)</p>	<ul style="list-style-type: none"> <li>• Incorrect: (Whereupon the reporter read back the three previous questions and answers)</li> <li>• Correct: (Record read)</li>   <li>• Incorrect: (Whereupon the lunch recess was taken at 12:30 p.m.)</li> <li>• Correct: (Recess)</li> </ul> <p>Examples of appropriate events to identify are indicated within the following parentheticals:</p> <ul style="list-style-type: none"> <li>• Excluded text: (Pages 45-55 sealed) (Reported but not transcribed) (Jury voir dire conducted)</li> <li>• Recesses, adjournments: (Recess) (Adjournment)</li> <li>• Readback: (Record read)</li> <li>• Oaths: (Bailiff sworn) (Jurors sworn) (Jury panel sworn)</li> <li>• Interjection by reporter: (Reporter interrupts)</li> <li>• Common interruptions: (Discussion off the record)</li> <li>• Response is not audible: (No audible response)</li> </ul> <p>It is the responsibility of the court to clarify on the record nonverbal conduct or events. Examples of nonverbal conduct or events that do not require independent clarification by the court reporter in the transcript include the following:</p> <ul style="list-style-type: none"> <li>• Marking exhibits;</li> <li>• Uncommon events;</li> <li>• Changes in/departures from introductory information (see “Introductory Information” below);</li> <li>• Head nodding and finger snapping; and</li> <li>• On/off the record.</li> </ul>
<p>Identification of Speakers</p>	<p>Definition of the term “Identification of Speakers”: A method of identifying clearly and unambiguously the maker of any given segment of colloquy in a reporter’s transcript.</p>

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<b>TRANSCRIPT ELEMENT</b>	<b>SPECIFICATION</b>
Identification of Speakers ( <i>continued</i> )	<p>Common speakers that should be identified include, but are not limited to the following:</p> <ul style="list-style-type: none"><li>• Alternate juror (by number);</li><li>• Attorney;</li><li>• Bailiff;</li><li>• Clerk;</li><li>• Court;</li><li>• Defendant;</li><li>• Foreperson;</li><li>• Interpreter;</li><li>• Juror (by number);</li><li>• Person in audience;</li><li>• Reporter; and</li><li>• Witness.</li></ul> <p>Where there are two or more defendants charged with the same complaint or information, each defendant's last name must be included in the identification. Example: "DEFENDANT SMITH" and "DEFENDANT BARRYMORE"</p> <p>Where two or more defendants or attorneys share the same last name, each individual's first and last names must be included in the identification. Examples: "DEFENDANT MARY SMITH" and "DEFENDANT JOHN SMITH"; "MR. SAM LOWE: Q." and "MS. VANESSA LOWE: Q."</p> <p>Format:</p> <ul style="list-style-type: none"><li>• Example: "MR. DARROW: Yes."</li><li>• Identification must be in all caps, followed by a colon.</li><li>• Single indent (5 spaces) the first character of text from the left text margin.</li><li>• A colon should immediately follow the identification.</li></ul> <p>The spoken words being transcribed must be identified as "Q" or "A".</p>

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TRANSCRIPT ELEMENT	SPECIFICATION
Identification of Speakers <i>(continued)</i>	<ul style="list-style-type: none"> <li>• In colloquy, the letter “Q”, followed by a period, must follow the colon after the speaker’s name by two spaces, and the following text must begin two spaces from the “Q.”</li> <li>• In continuous question and answer, the text must follow the “Q.” or “A.” by five spaces.</li> </ul>
Indentation/Placement	<ul style="list-style-type: none"> <li>• New paragraphs: Single indent (5 spaces) the paragraph’s first line from the left text margin. The subsequent text must return to the left text margin.</li> <li>• Quoted material and jury instructions: Double indent (10 spaces) the first line of text from the left text margin. The rest of the text must be single indented (5 spaces) from the left text margin.</li> </ul>
Indexes	<p>Chronological witness index: This index must include the following:</p> <ul style="list-style-type: none"> <li>• Witness name(s); and</li> <li>• Type of examination with page numbers.</li> </ul> <p>Exhibit index: This index must include the following:</p> <ul style="list-style-type: none"> <li>• Exhibit designation (Example: People’s 1);</li> <li>• Identification page number; and</li> <li>• Evidence page number.</li> </ul> <p>(Exhibit indexes will not be required for the electronic record.)</p> <p>Death penalty index: This index must include the following:</p> <ul style="list-style-type: none"> <li>• Identification of all sealed proceedings; and</li> <li>• Names of all parties present.</li> </ul>

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<b>TRANSCRIPT ELEMENT</b>	<b>SPECIFICATION</b>
Introductory Information	Daily appearances should appear immediately below the date line for that day's proceedings. The date line should be in capitalized text and only include the month (spelled in full), the date, and the year. (Example: DECEMBER 20, 2004) The names of judicial officers, and the court reporter's name and license number should also appear in the introductory information.
Justification	The transcript text must be justified only at the left; it must <i>not</i> be justified at the right.
Line Numbers	The transcript format must include line numbers to designate lines of text.
Line Spacing	The transcript text must be double-spaced.
Lines per Page	The transcript format must include 28 lines per page.
Margins: Left	The transcript format contains two left margins: the left <i>line numbering</i> margin and the left <i>text</i> margin. <ul style="list-style-type: none"><li>• Left <i>line numbering</i> margin: The left margin from the paper's edge to the line numbering must be 1.25 or 1.3 inches.</li><li>• Left <i>text</i> margin: The left margin from the paper's edge to the first character of a line of text must 1.75 or 1.8 inches.</li></ul> Note: Many versions of computer software do not allow margins to be designated in quarter-inch increments.
Margins: Right	There is no specified right margin. Various format specifications (such as characters per line and font size) will determine the right margin.
Margins: Top and Bottom	The top and bottom margins of the transcript must be no less than .75 or .8 inches.

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TRANSCRIPT ELEMENT	SPECIFICATION
Master Index Volume	Reporters must provide a separate master index volume for transcripts consisting of more than one volume. The master index volume must consist of the following items in the order listed below: <ul style="list-style-type: none"><li>• A cover page titled "Master Index Volume";</li><li>• Chronological duplicates of the indexes for each volume contained in the appellate record; and</li><li>• Chronological duplicates of the reporters' certificates.</li></ul>
Pagination/Volume	One day/one volume: Each volume must be designated by date and contain only that date's proceedings. Each volume must begin with page 1. The cover page of each volume must be numbered as page 1. Page numbers must be located on each page at the bottom right below the last line of text.
Paper Size	Transcripts must be printed on 8½" x 11" paper.
Vertical Line	The transcript format must not include a vertical line.

### Existing Statutory and Regulatory Provisions Affected by This Recommendation

Pursuant to AOC policies, this section lists relevant rules and regulations, which should be reviewed for possible changes if this section's recommendation is implemented. These citations generally deal with the form of the transcript, copies of the transcript, and transcript format standards.

Cal. Rules of Court, rules 4, 9; Cal. Code Regs., tit. 16, § 2473.

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### VI. WORD RATES AND RESPONSIBILITY FOR TRANSCRIPTS

#### Charge

Evaluate and make recommendations on 1) the ownership of transcripts and related products, and 2) uniformity of transcription and other court reporting service fees. (Note: This combines charges 4 and 5 as listed in the Executive Summary.)

#### Recommendations

7. Take the following actions concerning word rates:
  - A. For payment purposes, establish a single standard word rate for all court-paid transcripts;
  - B. Require the use of the same word rate for all transcripts of criminal and juvenile proceedings, irrespective of purchaser;
  - C. Ensure that a single standard word rate results in overall net revenue neutrality for reporters and overall net expenditure neutrality for the courts; and
  - D. For all other transcripts, establish a word rate that is 18 percent over the single standard word rate established in 7A above.
8. Require the use of one statewide software program to count the number of words in all electronic transcripts of court proceedings.
9. Adopt procedures through which the court assumes control of and responsibility for providing access to the transcript without further payment to the reporter beyond the initial payment.

#### **Word Rate for Court-Paid Transcripts and for Criminal and Juvenile Transcripts, Irrespective of Purchaser**

For the purposes of this report, the term “court-paid transcripts” refers to all certified verbatim transcripts (hereafter “transcripts”) purchased by the courts, including those transcripts ordered by attorneys (such as district attorneys and

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criminal defense attorneys). The majority of the transcripts purchased by the courts are for criminal proceedings. However, the courts also purchase transcripts for other matters. Currently, California Government Code section 69950 provides the basis for calculating the fee for a transcript. Specifically, it states,

“(a) The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words.

(b) The fee for a first copy to any court, party, or other person who does not simultaneously purchase the original shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, purchased at the same time, fifteen cents (\$0.15) for each 100 words.”

Although the statutory scheme does not specifically authorize a different transcript fee structure for purchasers other than the courts, the rates charged by reporters have varied both within and among the different court jurisdictions.

Historically, reporters have submitted paper transcripts to the courts. The thousands of transcripts purchased by the courts make it prohibitive to count manually and verify the number of words invoiced.

To address this inability to count the words manually, the courts created the administrative concept of “folio multipliers.” Folio multipliers are the number of folios—units of one hundred words—that are attributed per page. For example, in a court where a multiplier of 2.5 has been established, reporters are paid assuming there are 250 words per page. A range of folio multipliers have been reported to the AOC; the highest is 3.0 and the lowest is 2.3.

While the intent of creating folio multipliers was to provide an alternative to having to count the number of words in a transcript manually, the result has been inconsistency in the number of words paid for and provided. This has ultimately led to widespread disparity in the cost of the transcript within and among courts throughout the state. Given that, in passing and amending Government Code section 69950, the Legislature has established a definite pay rate for transcripts, folio multipliers provide for payments that are not clearly consistent with statute.

As a result of extensive discussion, the task force recommends the development of a statewide word rate for court-paid transcripts and that same word rate for criminal and juvenile transcripts, irrespective of purchaser. The major purpose of this recommendation is to create a more consistent transcript fee statewide. The task force agreed that this policy change must result in overall net revenue neutrality for

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reporters and overall net expenditure neutrality for the courts. Factors to be considered in establishing the statewide word rate include copy income, an estimated average number of copies and originals, costs to the courts, and reduced costs to reporters. Reporters would be compensated for a loss of copy income because, with the transition to an electronic system, the courts would assume control of the transcript upon its transmission by the reporter. It is anticipated that the establishment of a word rate will require formal negotiations. The new word rate would not become effective until the transition to electronic transcripts is implemented.

The task force voted to establish a single standard word rate for court-paid transcripts and that same word rate for criminal and juvenile transcripts, irrespective of purchaser. One task force member, Ms. Maura Baldocchi, voted against this recommendation.

The charge directed the task force to address the “ownership of transcripts and related products.” The task force recommends that, after appropriate payment, the responsibility and control of all such products transfer to the court. The charge further directed the task force to address the “uniformity of transcription and other court reporting service fees.” The task force interpreted this to mean that it was to identify the relevant factors for subsequent negotiations between the interested parties.

### **Word Rate for All Other Transcripts**

Generally speaking, the majority of transcripts not purchased by the courts are transcripts of civil proceedings. The cost of transcripts for civil proceedings is even more varied than the cost of transcripts for criminal matters. In many instances, civil transcript fees have been individually negotiated between court reporters and civil litigants. As a result, civil transcript charges vary from reporter to reporter, and within and across county lines. When a reporter is assigned to a civil case, the transcript fee is often not known until the civil litigant proceeds to purchase the transcript.

The task force recommends establishing a uniform statewide word rate for all transcripts not purchased by the court to create more consistency in fees for the public. Also, the task force agreed that the rate for all transcripts not purchased by the court should be greater than the single standard word rate (for court-paid transcripts and for criminal and juvenile transcripts, irrespective of purchaser) because production of transcripts for civil proceedings may be more difficult with

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respect to the following:

- Research efforts;
- Varied and more complex computer dictionaries;
- Time spent reviewing stenotype notes to provide estimates and waivers;
- Time and cost to communicate with litigants, lawyers, and others;
- Interaction with other court employees when acting as the primary reporter; and
- Delivery expenses.

Accordingly, the task force voted that these differences in degree of difficulty should be reflected in the word rate for all transcripts not purchased by the court. Specifically, the task force voted that the word rate for all transcripts not purchased by the court should be 18 percent greater than the single standard word rate for court-paid transcripts and for criminal and juvenile transcripts, irrespective of purchaser.

One task force member, Ms. Maura Baldocchi, voted against this recommendation in its entirety.

### **Word Counting Software**

Recommendation 8 proposes that the council require the use of one standard statewide software program to count the number of words in all electronic transcripts of court proceedings. The task force concluded that a word must not be defined by the number of characters it contains. Rather, the task force recommends the utilization of a commercially available software program's word counting function to verify the number of words in a document and to establish the word count baseline. Present and future software must provide an accurate word count that is consistent with the established word count baseline. The software program would constitute an accurate and verifiable method of determining the fee for a transcript. This consistent and accessible method of determining the transcript fee would, for the first time, give purchasers a quick and reliable tool to ascertain the accuracy of a transcript invoice. The electronic word counting program would also assist reporters in addressing their clients' long-standing concerns and frustrations with respect to the practical inability to verify the accuracy of transcript invoices. Additionally, it would allow court reporters to actively address the divergences among transcript fees throughout the state.

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The word counting program must be accessible to stakeholders—the courts, reporters, litigants, and attorneys—so that they can personally verify the number of words contained in the transcript. As technology changes, standards for the statewide software program may require modifications.

One task force member, Ms. Maura Baldocchi, voted against this recommendation in its entirety.

### **Responsibility for and Control of the Transcript**

Historically, reporters have controlled the sale of transcript copies.

With the transition to online delivery, maintenance, and storage of transcripts, the courts should assume control of and responsibility for the transcript consistent with that for other public records. Reporters would not receive any additional reimbursement for copies obtained from the court's Web-based system, beyond what they are initially paid, after the transcript has been transmitted via this Web-based system.

The task force voted for the courts to have responsibility for and control of the transcript once it is transmitted via a secure Web-based system.

One task force member, Ms. Maura Baldocchi, voted against this recommendation in its entirety.

### **Existing Statutory and Regulatory Provisions Affected by These Recommendations**

Pursuant to AOC policies, this section lists relevant statutes, rules, and regulations, which should be reviewed for possible changes if this section's recommendations are implemented. These citations generally deal with the approved unit to be used for billing for transcription services.

Gov. Code, §§ 69950, 69954.

Cal. Rules of Court, rule 4.162.

Cal. Code of Regs., tit. 2, §§ 1021.1, 1021.8.

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### VII. ALTERNATIVE METHODS OF PRODUCING THE TRANSCRIPT

#### Charge

Evaluate and make recommendations regarding the shortage of qualified court reporters, including such issues as recruitment, retention, and the consequent need to develop criteria for the use of alternative methods of reporting and maintaining the record.

#### Recommendations

10. Favorably act upon the recommendations that proceed from the agreement titled "Agreement – Use of Nonstenographic Methods for Reporting of the Record, February 6, 2004."
11. If the recommendations of the above-mentioned agreement are enacted, create a rule of court to provide guidelines for the identification of inaudible and unintelligible speech in transcripts produced by nonstenographic reporting methods.
12. Create rules of court to require that all transcripts produced from nonstenographic reporting methods and transmitted to the courts comply with all recommendations contained in this report.

#### Background

In November 2003, the AOC extended an invitation to the leaders of the court reporter community to meet and develop a comprehensive policy to address the court reporter shortage and its impact on the courts. While the task force never reached consensus on the reasons for the unavailability of reporters, it was generally agreed that the pool of court reporters was not sufficient to meet court needs within all trial court jurisdictions. The following associations were invited to participate: California Court Reporters Association (CCRA); California Official Court Reporters Association (COCRA); Deposition Reporters Association (DRA); and Los Angeles County Court Reporters Association. Two associations, COCRA and

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DRA, declined to participate. CCRA opted to participate and conducted negotiations through its Executive Committee. The participants engaged in an expansive decision-making process to help ensure credible and mutually satisfactory resolutions.

In February 2004, the AOC and CCRA developed an agreement to be considered by the task force as its recommendations to address the need for more flexible use of electronic recording while providing job protections for court reporters working in the courts. The recommendations proceed from the following agreement, which was developed through consensus.

CCRA represents the majority of California official reporters. After entering into the agreement with the AOC, CCRA circulated petitions to official court reporters to determine the level of support for the agreement. The petition included a copy of the agreement. Based on more than 1200 signatures received in support of the agreement, CCRA estimates that 80 percent of official reporters endorse the agreement. COCRA, however, disputes the representation that a majority of official reporters endorse the agreement. The AOC and CCRA view the agreement as representing a mutually beneficial compromise that provides a long-term resolution to complex policy issues and addresses employee and court operational needs. Accordingly, the agreement was presented to the task force for consideration.

The task force views the agreement with CCRA as the culmination of both sides' long-standing efforts to reach an effective, cooperative resolution regarding electronic recording. For judges, court reporters, and court administrators, the compromise articulated in the agreement represents a unique opportunity to bring an end to chronic battles over this issue and move forward with providing court reporting services.

At the March 2004 task force meeting, a motion was made to adopt this agreement, without amendment, as the task force's recommendations. The task force voted in favor of this motion. One member, Ms. Maura Baldocchi, voted against the motion in its entirety.

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The text of the agreement as developed by the AOC and CCRA is presented here in its original version. It was not copyedited for the publication of this report.

### Agreement – Use of Non-stenographic Methods for Reporting of the Record, February 6, 2004

#### 1. Job Protections

A. No official reporter or official reporter pro tempore as described in 1. A. ii. will lose his or her job or have his or her hours of employment reduced as a result of the use of nonstenographic means of making the official record. This provision applies to:

i. Official reporters who are employees of a trial court at any time between January 1, 2004, and the effective date of the statute.

ii. Official reporters pro tempore who performed services for a trial court at least an average of 14 days per month over a 12-month period or an average of at least 8 days per month over a 24-month period measured as of January 1, 2004, or the effective date of the statute. For any court that had a period of furlough within the time frames indicated, the number of furlough days will be added to the beginning of the time period for purposes of calculation.

B. This provision is not intended to restrict the trial courts in making assignments, require the trial courts to treat pro tempore reporters as employees, or preclude the trial courts from reducing hours or eliminating jobs for reasons other than the use of nonstenographic means of making the official record. Claims that a violation of provision 1.A. has occurred must be made within 18 months of the termination, layoff or reduction of hours.

C. Disputes about whether this provision has been violated shall be resolved through the same procedures as provided by SB 2140. Where court reporters in a trial court have an exclusive representative for purposes of collective bargaining and have negotiated a dispute resolution procedure pursuant to SB 2140, that procedure will be applicable.

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### 2. Preparation of Transcripts of Electronically Recorded Proceedings

A. The local trial court must arrange for the transcription of electronically recorded proceedings. A transcript of electronic media cannot be used, cited, or transcribed as the official record of the proceedings unless the transcription is arranged through the local trial court.

B. The local trial court shall notify the ordering party that the official record is the transcript of the electronic media and that such transcription must be arranged through the local trial court.

C. Official reporters employed by the local trial court shall have the right of first refusal for all transcript preparation work stemming from the nonstenographic recording of proceedings. Where the official reporters are represented by an employee organization for purposes of collective bargaining, transcription will be pursuant to an agreement between the trial court and the local employee organization. The scope of the agreement shall be limited to a method for assuring the cost, the quality, and timeliness of transcription. If the official reporters decline to provide such transcribing services consistent with this section, the trial court may seek alternative arrangements for transcribing services.

D. The trial court shall pay official court reporter employees the statutory rate for transcript preparation. If the official court reporter employees decline to provide transcribing services at this rate, the court may obtain transcription services at market rates from either the official court reporter employees or alternate transcription services and enter into a contract, not to exceed one year, for such services. This process shall be repeated on an annual basis. Until such time as an agreement is reached with official court reporter employees, the court shall be authorized to use alternative transcription services.

E. If portions of an electronically recorded proceeding cannot be understood, the transcript shall indicate [unintelligible] or [inaudible] as appropriate. The procedures under which this will be implemented will be referred to the Reporting of the Record Task Force for recommendation.

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### **3. Use of Nonstenographic Reporting to Make the Official Record**

A. A court reporter shall be used in the following trial court proceedings to make the verbatim record:

1. All felony matters
2. All juvenile proceedings presided over by a judge
3. All criminal grand jury proceedings
4. All unlimited civil proceedings in large courts which are defined as Alameda, Orange, Los Angeles, Riverside, Sacramento, San Bernardino, San Diego, San Francisco and Santa Clara.

B. In other than large court unlimited civil proceedings, the provisions of California Code of Civil Procedure section 269 and California Rule of Court 891 remain unchanged.

C. In all other proceedings where a verbatim record is required, that record may be made by a court reporter or by nonstenographic means approved by the Judicial Council.

D. The phrase “where a record is required” is not intended to alter current statutory provisions under which circumstances a record is required except as explicitly specified. Except as specified, the only change intended is to provide specific circumstances under which nonstenographic means of reporting the record is permitted.

### **4. Use of nonstenographic recording**

A. Nonstenographic recording may only be used to record proceedings where specifically authorized by statute. Other than in those proceedings where nonstenographic recording is permitted by statute, nonstenographic methods shall not be used to make the official verbatim record. The use of such nonstenographic recording shall be limited solely to judicial officers and/or court staff. Such nonstenographic recording shall not constitute a public record and may not be given away, sold or distributed to anyone, including the public or parties.

B. The local trial courts shall annually report to the Judicial Council all purchases of nonstenographic recording equipment and the type and number of courtrooms in which it is being utilized.

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### **5. Legislative Moratorium**

Unless by mutual agreement, neither the Judicial Council/AOC nor CCRA directly or through proxies will propose, initiate, support, or lobby for any legislation to alter in any way the provisions contained in this agreement for 10 years from the effective date of this legislation. The Judicial Council/AOC and CCRA shall not, however, be estopped from taking a position on such legislation in the event that some other entity or person proposes or introduces it.

### **6. Integrated Document**

This agreement is an integrated document and the parties agree that all provisions are interdependent. Any amendment of the terms of this agreement except by mutual consent of the parties shall constitute a breach of good faith and render this agreement null and void. The parties agree that they shall use their best efforts in support of this agreement.

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### ***Section 2.E of the Agreement: Identification of Inaudible and Unintelligible Speech***

Section 2.E of the above agreement states that if portions of an electronically recorded proceeding cannot be understood, the transcript shall indicate “unintelligible” or “inaudible” as appropriate. For the purposes of this report, “unintelligible” is defined as not capable of being understood or comprehended, and the term “inaudible” is defined as not capable of being heard. The task force was asked to clarify the circumstances under which these terms may be used. A rule of court is recommended to provide transcriptionists and reporters with clear guidelines clarifying when transcript text should be designated “unintelligible” and/or “inaudible.”

The task force developed the following guidelines for staff who would ultimately draft this rule should this recommendation of the agreement be enacted. The rule, if created, would require transcriptionists and reporters responsible for transcribing an electronic recording to take the following steps:

1. Use the terms “unintelligible” and/or “inaudible” only when necessary to ensure an accurate transcript;
2. Use their best efforts to transcribe the recorded proceedings accurately;
3. Listen to the recording using playback equipment that is compatible with the equipment used to make the recording;
4. Listen to the recording of each individual channel (where individual channels have been recorded) when necessary to determine what has been said; and
5. Indicate in the transcript that a portion of the recording was “unintelligible” or “inaudible,” as appropriate, only when such efforts to understand the proceedings have been unsuccessful.

### **Compliance of Transcripts Produced From Nonstenographic Reporting Methods**

All transcripts produced from nonstenographic reporting methods and transmitted to the courts must comply with all recommendations contained in this report.

### **Existing Statutory and Regulatory Provisions Affected by These Recommendations**

Pursuant to AOC policies, this section lists relevant statutes, rules, and regulations, which should be reviewed for possible changes if this section's recommendations are

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implemented. These citations generally deal with the ancillary powers and rights of those who produce the transcript (e.g., permitting payment to specified individuals, allowing specified individuals to administer oaths, or allowing specified individuals to report specified proceedings, such as telephonic or in camera proceedings), specifying who may report unlimited proceedings, and the definition of a “reporter's transcript.”

Code Civ. Proc., §§ 269, 273, 274a, 437(c), 651, 660, 914, 2093, 1953.06; Evid. Code, §§ 1042, 1062; Fam. Code, §§ 2451, 7895, 9005; Gov. Code, §§ 68086, 68525, 69941, 69942, 69944, 69946, 69952, 69953, 69955, 69956, 69957, 70137, 70141.11; Pen. Code, §§ 704, 817, 870, 871.5, 1127.

Cal. Rules of Court, rules 4, 4.162, 12, 31, 31.1, 31.2, 32, 32.1, 34.1, 35, 39.1A, 39.4, 39.8, 187.5, 890, 891, 980.5, 980.6.

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### VIII. STATEWIDE TRAINING FOR COURT REPORTERS

#### Charge

Evaluate and make recommendations regarding the training of court reporters.

Currently, there is no statewide training program for court reporters beyond that required for their licensure. Some superior courts have developed training programs to educate reporters on the specific requirements of their positions. Because the training programs were created by the courts to meet local needs, they vary in content and structure.

#### Recommendation

13. Design and implement a comprehensive curriculum for the training of court reporters through the assistance of the Administrative Office of the Courts' Education Division.

Statewide training would provide information concerning courtroom protocols, administrative responsibilities, transcript format, the legal mandates governing the profession, and changes to laws and rules.

At the request of the task force, the Education Division of the AOC collaborated with court reporters in identifying the necessary elements of a comprehensive curriculum for the statewide training of reporters. Once initial work is finalized, it will be available to courts and faculty to develop courses. These courses may be delivered through various training media, such as online courses, videos, and broadcasts. The training of reporters will remain one of the Education Division's ongoing areas of responsibility.

#### Existing Statutory and Regulatory Provisions Affected by This Recommendation

No existing laws, rules or regulations appear to be affected by this recommendation.

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### IX. APPELLATE TRANSCRIPT

#### Charge

Evaluate and make recommendations regarding provisions relating to court reporting of the Appellate Rules of Court and related statutes.

#### Recommendation

14. Implement the following changes concerning appellate transcripts:
- A. Amend the California Rules of Court so that the term “certified transcript” shall include either a certified original or a copy that has been certified as an accurate duplicate of the original.
  - B. Amend the California Rules of Court to require the reporter to certify each copy of the transcript as an accurate duplicate of the original.
  - C. Amend rules 4 and 9 of the Appellate Rules of the California Rules of Court to clarify and simplify the process in which a designated transcript is prepared for filing to the appellate court. At the request of the Judicial Council’s Rules and Projects Committee, the task force developed the following suggested language for rules 4 and 9:

#### Rule 4. Reporter’s transcript

(a) – (b) \* \* \* [no change]

#### (c) Single transcript volume as substitute for deposit

If a party submits a single volume of certified transcript under (b)(3) as its entire designated reporter’s transcript, that volume’s indexes and reporter’s certificate constitute the master index volume.

#### (d) Multiple transcript volumes as substitute for deposit

(1) A party that designates more than one date for its reporter’s

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transcript may substitute a certified transcript volume for any date.

(2) If all the designated transcript volumes have been prepared, the party must:

(A) prepare a bound master index volume consisting of a cover page complying with rule 9(c) and duplicates of each volume's indexes and reporter's certificate, and

(B) deliver the master index volume and all the designated transcript volumes to the clerk.

(3) If one or more of the designated transcript volumes has not been prepared:

(A) the party must deliver to the clerk a cover page for a master index volume, duplicates of the indexes and reporter's certificate of each transcript volume that has been prepared, and a duplicate of each prepared transcript volume;

(B) the clerk must forward the items received under (A) to the primary reporter or court designee; and

(C) the primary reporter or court designee must prepare a bound master index volume consisting of a cover page and duplicates of each volume's indexes and reporter's certificate, and must deliver the master index volume and each prepared transcript volume to the clerk.

~~(e)–(g)~~ (e) – (i) \* \* \* [no change to text]

### Rule 9. Form of the record

(a) – (c) \* \* \* [no change]

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(d) ~~Daily~~ Certified transcripts

~~Daily or other certified~~ Certified transcripts of all or part of the designated proceedings, substituted for a deposit under rule 4(c)-(d), may be used for all or part of the reporter's transcript, ~~but the pages must be renumbered consecutively and the required indexes and covers must be added.~~

(e) - (f) \* \* \* [no change]

### Background

The Judicial Council conveyed to the task force the broad responsibility of evaluating revisions to the Appellate Rules of the California Rules of Court forwarded to it for consideration. The council did not request that the task force review all of the appellate rules relating to court reporting.

In August 2000, the council's Rules and Projects Committee circulated proposed revisions to rules 4 and 9 for public comment. Specifically, the committee proposed revisions to rules 4(b)(3), 4(d)(3), and 9(d). These rules allow parties<sup>2</sup> to substitute "dailies" (certified and expedited transcripts of one day's proceedings) or partial certified transcripts as part of the record on appeal. Because the rules were written in a passive voice, it was not clear who was responsible for indexing, paginating, and binding such transcripts. The proposed revisions attempted to reaffirm that parties could submit transcripts of one day's proceedings or partial transcripts as the appellate record. The proposed revisions also clarified that the court reporter would be responsible for indexing, repaginating, and binding these transcripts for filing to the appellate courts. The court reporting community conveyed its oppositions to these proposed revisions. Upon review of the comments, the committee recommended that these rules be modified. So that resolution could be reached on this matter, these issues were forwarded to the task force as part of its charge.

The task force has developed suggested language for California Rules of Court 4 and 9. (See recommendation 14.C) The task force would like to note that it has

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<sup>2</sup> For the purposes of this section, the word "parties" is defined as the persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding.

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offered suggested language in response to a direct request from the Judicial Council's Rules and Projects Committee. The task force acknowledges that any revisions to rules 4 and 9 should occur within the council's rule amendment process. The revisions proposed by the task force rely on the incorporation of three other recommendations it has already developed: 1) that the transcript for each day's proceeding be contained in one separate volume; 2) that a "master index volume" be created for all volumes of the appellate record; and 3) that the necessary information traditionally contained in a title page and cover page be incorporated into a new council form. See section V, "Uniformity of the Transcript," for a more in-depth discussion of these recommendations.

### **Intent of the Task Force**

In considering its revisions to rules 4 and 9, the task force determined that it was necessary to address the issue of the use of certified copies of the original transcript. For the purposes of this report, a transcript is "certified" when a reporter or transcriptionist attests that the transcript is a verbatim, accurate, and complete memorialization of the oral proceedings. The task force determined that copies of the original transcript should be permitted to be certified as accurate copies and utilized in lieu of the certified original. It is the intent of the task force in making this recommendation to reduce the costs for litigants and increase their access to the appellate process.

In proposing the other revisions to rules 4 and 9 (see recommendation 14.C), the primary objective is to clarify and simplify the process in which a designated transcript is prepared for filing to the appellate court. The proposed revisions are intended to make it clear that a party may submit a transcript for just one day's proceedings. As a result of the task force's recommendation that each day's proceeding be contained in one separate volume, parties would submit one or more volumes rather than partial transcripts. If a party is submitting a transcript for only *one* day's proceedings, that volume's index and reporter's certificate would suffice as the master index volume.

When the party wishes to file transcripts for *two or more* days' proceedings and all volumes are already prepared, no notice to prepare a transcript shall be given to the reporter. The party would be responsible for creating the master index volume. The party would also be responsible for submitting the master index volume and each designated volume to the superior court clerk's office.

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The process for filing the appellate record would differ where the party wishes to submit transcripts for *two or more days'* proceedings, *but one or more of the designated volumes of the record are not prepared*. In this situation, the party would be required to submit the following items to the superior court clerk's office: 1) each designated volume, 2) a copy of the volumes containing each index, 3) a copy of each reporter's certificate, and 4) a completed cover page. The clerk's office would then be responsible for forwarding these documents to the reporter it assigned as the "primary" reporter or to another designated employee. The proposed revisions would require the primary reporter or court designee to create the master index volume. Upon completing this responsibility, the primary court reporter or court designee would also be responsible for forwarding a bound master index volume and all designated volumes to the clerk's office. To facilitate this process for parties, the task force also recommends that the council create a new form to incorporate the critical information traditionally contained in transcript title and cover pages. This new form would serve as a cover page for the master index volume. By recommending that the council develop a form, the task force intends that parties will have easy access to a template that they can use to provide case-specific information without the necessity and expense of requesting that a court reporter create a cover page or reformat the transcript.

While the task force has developed an overarching recommendation that all court reporter transcripts be electronic and transmitted electronically, it recognizes that appellants will use paper copies of the record. Therefore, the proposed revisions include such terms as "bound" and "copies" to reiterate that appellants may substitute paper volumes of one day's proceedings already in their possession for a portion or all of the reporter's transcript on appeal.

Revisions to rule 9(d) are proposed to reiterate that volumes of one day's proceedings may be substituted for a portion or all of the reporter's transcript on appeal. Also, it would no longer be necessary to require that the *pages* of the reporter's transcript on appeal be numbered consecutively from volume to volume. Instead, parties would be able to compile the volumes for each day's proceedings in chronological order and forward the volumes as the reporter's transcript on appeal.

### **Existing Statutory and Regulatory Provisions Affected by This Recommendation**

Pursuant to AOC policies, this section lists relevant statutes, rules, and regulations, which should be reviewed for possible changes if this section's recommendation is

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implemented. These citations generally deal with the duties of a court reporter, page limits, and copies.

Code Civ. Proc., §§ 269, 271, 274a; Pen. Code, §§ 869, 871.5, 938.1, 1539.

Cal. Rules of Court, rules 4, 9, 35, 35.1, 35.2.

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# APPENDIX 1

## Online Registration and Certification: Transcripts, Master Indexes, and Reporters' Notes

This appendix illustrates the recommendations discussed in section III,  
“Delivery, Maintenance, and Storage.”

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### APPENDIX 1

#### **ONLINE REGISTRATION AND CERTIFICATION: TRANSCRIPTS, MASTER INDEXES, AND REPORTERS' NOTES**

The task force recommends that the entire online process begin with registration by the court reporter, transcriber, or other authorized individual (hereafter the "user"). The user would be required to log into a secure Web-based system to electronically deliver three documents: the transcript, master index, and reporter's notes. (See "Web Screen 1.") The user would log on by entering certain identifying information (e.g., license number or another log-in number, and password). The user would need to begin and complete the registration and certification process for each document he or she intends to submit.

After the system grants access to the site, the user would be required to enter information concerning the judicial proceeding (e.g., case caption and case type). (See "Web Screen 2.") The user would also indicate the type of document he or she is submitting (e.g., stenographic notes, a corrected transcript, and master index). The user would also indicate if he or she is transmitting a transcript or master index for a death penalty case. If the user indicates that the document relates to a death penalty case, the document should be electronically flagged to alert the superior court clerk and transmitted to a databank dedicated to death penalty documents to expedite its processing. Similarly, the user would indicate if he or she is submitting a sealed or confidential transcript. To protect against unauthorized access to sealed or confidential transcripts, the online registration system would also forward these documents to a separate databank. At this point, the user would also attach the electronic file to be submitted.

Next, the user would be required to click on an attestation box to certify that the document is complete and accurate. (See "Web Screen 3.") The task force recommends that the implementation group develop standardized attestation language. Where a transcript is submitted, the attestation language should state that the document is verbatim, accurate, and complete. It should also include the page numbers of the transcript and the user's license number or other identifying number. Where a master index or notes are transmitted, the attestation language should convey that the document is accurate and complete. This text should also include the page numbers of the document and the user's license number or other identifying number.

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The computer-generated certificate should contain much of the same information currently included in the paper certificate. A benefit to using a Web-based system is that it, rather than the user, can generate some of the certificate's information. The task force recommends that the computer-generated certificate contain the following information (the specific data that would be generated by the computer are indicated):

- The document's title "Reporter's Certificate";
- Name of the superior court;
- Case caption;
- Superior court case number;
- Appellate court case number;
- Standardized attestation language (computer-generated text);
- User's name;
- Page numbers transmitted;
- Date of proceeding;
- Number of words in the document (computer-generated data);
- User's electronic signature (computer-generated data);
- Date (computer-generated data); and
- User's license number or other identifying number.

Once the user has entered all of the required information, he or she will have the opportunity to verify the accuracy of the online process by reviewing the data shown on a confirmation screen. (See "Web Screen 4.") This screen should allow the user to verify that his or her entries were accurately recorded. The task force recommends a confirmation screen as part of the online process to better ensure accurate transmittals. When the user has entered all the necessary data, reviewed the confirmation screen, and attached the file, he or she concludes the registration process by clicking on a "submit" button.

### **Electronic Receipt for Users**

After the user has completed the online registration and certification process, the system should immediately send an electronic receipt to the user. This receipt could be in the form of an e-mail. The electronic receipt would serve two major purposes. First, it would provide the user with documentation showing he or she has electronically filed the transcript, master index, or notes. Second, when transcripts are filed, the online system would automatically calculate the number of words in the transcript and the receipt would indicate the total number of words contained in the document. As discussed in section VI, "Word Rates and Responsibility for

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Transcripts,” the online system would use a standard software program to provide a word count. Because the receipts for filed transcripts would provide a word count, the user could use this receipt to invoice for the transcript or master index.

The electronic receipt should include the following data elements:

- Name or location of the online site;
- Contact information for the online site;
- Name of the superior court;
- Case caption;
- Superior court case number;
- Appellate court case number;
- Page numbers transmitted;
- Date of proceeding;
- Number of words in the document;
- User’s name;
- User’s license number or other identifying number;
- Date of transmittal; and
- Time of transmittal.

The electronic receipt marks the end of the user’s responsibilities with respect to the online process. Once the user has transmitted the document and received the receipt, the courts would assume responsibility for delivery, maintenance, and storage of the document.

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### MOCK WEB SCREENS FOR ONLINE REGISTRATION AND CERTIFICATION

Note: All reporters, transcribers, and other authorized individuals (hereafter “users”) would be required to complete the following online registration when submitting a transcript, master index, or reporter’s notes to the superior court.

#### WEB SCREEN 1

<b>Log-in</b>	
License number or other log-in number:	<input type="text"/>
Password:	<input type="text"/>
Confirm password:	<input type="text"/>
<a href="#">New Users?</a> Click here for instructions on enrolling as a registered user of this system. <i>[This link would provide a broad level of information concerning the registration process and direct the user to the appropriate superior court for specific instructions.]</i>	

#### *Notes regarding Web Screen 1:*

- The registered user will enter his or her license number (or other log-in number) and password to gain access to the system.*
- To enroll as a registered user, a reporter, transcriber, or other individual would be required to follow established procedures. The pilot project’s implementation group would be responsible for developing these procedures.*

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### WEB SCREEN 2

#### User's Profile

Name: Jane R. Doe License number or other identifying number: X  
E-mail: jdoe@courts.ca.gov [Update e-mail address](#)

#### Case and Document Information

Superior Court of California, County of:

*[Drop down list of counties]*

Case caption:

Superior court case number:

Appellate court case number:

Case type:

*[Drop down list of all major case types, including misdemeanor appeals]*

Date of proceeding:

*[Month, date, and year to be clearly specified]*

All pages you are submitting (e.g., 1-100, 150-200):

Are you submitting a transcript or master index for a death penalty case?  Yes  No

Please check the appropriate box below to indicate the type of document you are submitting:

- |   |  |
|---|--|
| <input type="checkbox"/> Stenographic notes                   | <input type="checkbox"/> Supplemental transcript |
| <input type="checkbox"/> Transcript for one day's proceedings | <input type="checkbox"/> Augmented transcript    |
| <input type="checkbox"/> Transcript with redacted information | <input type="checkbox"/> Corrected transcript    |
| <input type="checkbox"/> Sealed or confidential transcript    | <input type="checkbox"/> Master index            |

Page numbers of the sealed or confidential portions (e.g., 30-35)

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### WEB SCREEN 2 (*continued*)

Attach File	
Attach File:	<input type="text"/> <input type="button" value="BROWSE"/>

#### Notes regarding Web Screen 2:

- The user's name, license number (or other identifying number), and e-mail address will be replicated in this screen.
- Clicking on the "Update E-Mail Address" link will take users to a screen where they can edit their e-mail addresses.

### WEB SCREEN 3

Attestation
<p><i>[The pilot project's implementation group will develop standardized attestation language. The attestation language should include the page numbers of the document submitted and the reporter's license number.]</i></p>



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# APPENDIX 2

## **Sample Cover Page and Transcript Illustrating Format Recommendations**

The sample transcript illustrates the format specifications discussed in section V, “Uniformity of the Transcript.”

Superior Court  
County of Riverside

)  
Court of Appeal  
Fourth Appellate District

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IN THE FOURTH APPELLATE DISTRICT  
OF THE STATE OF CALIFORNIA  
RIVERSIDE COUNTY SUPERIOR COURT

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

vs.

Appellate Court No. E-123456

NON-STANDARDIZED TRANSCRIPT,

Superior Court No. 1

Defendant.  
\_\_\_\_\_ /

REPORTER'S TRANSCRIPT OF JANUARY 1, 2005

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JANUARY 1, 2005  
BEFORE THE HONORABLE JOHN WILLIAMS  
COURT REPORTER'S NAME, CSR NO. XXXX  
FOR THE PLAINTIFF: JOHN SMITH  
FOR THE DEFENDANT: WILLIAM JONES

THE COURT: The Court will now call the case of the  
People vs. Non-Standardized Transcript, Case No. 1.

Mr. Smith, you may call your first witness.

MR. SMITH: The People call Uniform Transcript to the  
stand.

THE CLERK: Please raise your right hand.

You do solemnly state that the testimony you are about  
to give will be the truth, the whole truth, and nothing but the  
truth, so help you God.

THE WITNESS: I do.

THE CLERK: Please be seated.

Please state your full name and spell it for the record.

THE WITNESS: Uniform Transcript. U-n-i-f-o-r-m  
T-r-a-n-s-c-r-i-p-t.

THE COURT: Mr. Smith, you may examine.

MR. SMITH: Thank you.

(Witness sworn)

DIRECT EXAMINATION

MR. SMITH: Q. Uniform Transcript, could you tell us  
why you have been created?

MR. JONES: Objection. Hearsay.

1 THE COURT: Sustained.

2 MR. SMITH: Q. Uniform Transcript, what is the  
3 particular font that you utilize?

4 A. That would be Arial 14.

5 Q. And what would your left and right margins be?

6 A. I contain two left margins. The first left margin is  
7 set at 1.3 inches from the paper's edge to the line  
8 numbering. The left text margin is 1.8 inches from the  
9 paper's edge to the first character in the line. There is no  
10 specified right margin.

11 MR. SMITH: I have nothing further.

12 THE COURT: Mr. Jones.

13 MR. JONES: Thank you, your Honor.

14 CROSS-EXAMINATION

15 MR. JONES: Q. Uniform Transcript, how many lines per  
16 page do you contain?

17 A. I contain 28 lines per page, with a top and bottom  
18 margin of no less than .8 inches.

19 Q. What would the number of characters per line be?

20 A. No more than 62 characters of text per line,  
21 which includes blank spaces.

22 MR. JONES: Your Honor, may we approach sidebar?

23 THE COURT: Yes.

24

25 (Outside the presence of the jury:)

26

27 THE COURT: We're outside the presence of the jury.

28 Mr. Jones.

1 MR. JONES: Yes, your Honor. In my questioning of the  
2 witness about the number of characters per line, I believe  
3 the witness did not add that quoted material and jury  
4 instructions would be double indented 10 spaces, the first  
5 line of that text, from the left text margin. The rest of the text  
6 must be single indented 5 spaces from the left text margin.

7 THE COURT: Well, I'll let you ask him that in front of the  
8 jury.

9

10 (In the presence of the jury:)

11

12 MR. JONES: Q. Is it true that the first line of text of  
13 quoted material and jury instructions would be double  
14 indented 10 spaces from the left text margin?

15 A. Yes, that's true.

16 Q. Would that allow for less than 62 characters on that  
17 line?

18 A. Yes.

19 MR. JONES: I have nothing further.

20 THE COURT: Mr. Smith?

21 MR. SMITH: Yes.

22 REDIRECT EXAMINATION

23 MR. SMITH: Q. New paragraphs, how would you set  
24 that up?

25 A. New paragraphs would be a single indent, 5  
26 spaces, for the paragraph's first line from the left text  
27 margin. The subsequent text would then return to the left  
28 text margin.

1 Q. The transcript box that we were so used to in the  
2 previous format, does that still appear in your format?

3 A. No. The transcript box is not part of the new  
4 format.

5 Only the line numbers appear in the new format, with the  
6 page numbers located on each page at the bottom right,  
7 below the last line of text.

8 Q. As far as pagination, would the new format allow  
9 for all dates to be consecutively numbered in an appellate  
10 transcript?

11 A. No. The new format is "One Day/One Volume."  
12 Each day would begin with Page 1, which would be the  
13 cover page, and each day would be a volume. The volume  
14 designation would be the date of the proceedings.

15 MR. SMITH: I have nothing further.

16 THE COURT: Mr. Jones?

17 MR. JONES: Nothing further.

18 THE COURT: We will adjourn for today and begin again  
19 tomorrow at 9:30. Please remember the admonitions.

20

21 (Adjournment)

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